IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13253 of 2004

Between:

Sri Venkateswara Constructions, H. No. 1-7-1339, Advocates' Colony
Hanumakonda, Warangal District, a partnership Firm,

registered under the partnership Act, rep by Managing Partner
M. Ravinder Reddy S/o Rama Krishna Reddy

R/o Hanumkonda, Warangal District

..... PETITIONER

AND

1. The Commissioner of Tenders, A.P., VI Floor, B.R. K.R. Bhavan,

Hyderabad
2 The Chief Engineer, roads, Errramanzil Colony, Somajiguda, Hyderabad
3 The Superintending Engineer, R&B Circle, Nalgonda

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction one in the nature of Mandamus declaring the action of the respondents in seeking to disqualify the tender filed by the petitioner for the work in respect of “Improvements to Jangaon to Suryapet Road from KM 44/0 to 55/0 on the ground that the petitioner obtained a bank guarantee towards EMD for the above said work in favour of the superintendent Engineer (R&B Circle), Nalgonda, the 3rd respondent herein instead of Pay and Accounts Officer, Nalgonda, though the same is not mentioned in the tender schedule furnished to the petitioner and though the said condition is not an essential condition, as arbitrary, illegal, unjust, violative of the fundamental Rights guaranteed to the partners of the

petitioner under Articles 14, 19(1)(g) and 21 of the Constitution of India and issue a consequential direction to the respondents to consider the tender of the petitioner without insisting on the condition that the EMD in the form of bank guarantee should be obtained to favour of the Pay and Accounts Officer, Nalgonda and pass such other order or orders.

Counsel for the Petitioner:MR.S.SRINIVAS REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR TRANSPORT ROADS & BUILDINGS

WRIT PETITION NO : 13851 of 2004

Between:

M/s.Sujana Constructions rep., by its Managing Partner
R.Rammohan Rao, S/o Papa Rao, R/o 1-10-149, Ashoknagar, Hyderabad.

..... PETITIONER

AND

1.The Superintending Engineer, R&B Circle,

Nalgonda, Nalgonda District.

2 The Commissioner of Tenders, BRKR Buildings, Hyderabad.
3 The Chief Engineer (R&B), Errum Manzil, Hyderabad.

4 Sri Venkateswara Constructions, rep by Managing Partner
M. Ravinder Reddy S/o Rama Krishna Reddy

H.No.1-7-1339, Advocates Colony

Hanumkonda, Warangal District

(R.4 is impleaded as per Court orders dt.4.3.2005 in W.P.M.P.No.3570 of2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or direction particularly one in the nature of writ of Mandamus declaring the action of the respondents in not opening the Price bid of the petitioner in respect of the tenders called for improvement of Janagaon to Suryapet Road from KM 44/0 to 55/0 in respect of Notice N I T No.TS/02/2004-05 as illegal, improper, arbitrary, unreasonable and further direct the respondents to consider the tender of the petitioner by opening the price bid of the petitioner and pass such other order or orders.

Counsel for the Petitioner:MR.V.SREE RANGA RAO

Counsel for the Respondent Nos.1 to 3: GP FOR TRANSPORT ROADS & BUILDINGS

Counsel for the Respondent No.4: S.Srinivasa Reddy

CONTEMPT CASE NO.107 OF 2005

Between

M/s. Sujana Constructions

Rep. By its Managing Partner

R.Rammohan Rao, S/o. Papa Rao

R/o.1-10-149

Ashoknagar, Hyderabad. **… Petitioner/Petitioner**

And

1. Sri Ramakrishna Kumar,

The Superintending Engineer,

R& B Circle, Nalgonda, Nalgonda District.

2. Sri Ravinder Reddy,

The Commissioner of Tenders,

BRKR Buildings, Hyderabad

3. Sri Koteswara Rao

The Chief Engineer (R&B)

Errum Manzil, Hyderabad

… Respondents/

Respondents

Petition filed under Section 10 to 12 of the Contempt of Courts Act praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to summon the respondents for violating the orders passed by the Hon'ble High Court dt.5.8.2004 in W.P.No.13851 of 2004 and punish the respondents for contempt for not implementing the orders passed by the Hon'ble High Court and pass such other order or orders.

Counsel for the petitioner: SRI V. SREE RANGA RAO

Counsel for the respondents: **GP FOR TRANSPORT ROADS & BUILDINGS**

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.13253 and 13851 of 2004; and

CONTEMPT CASE NO.107 of 2005

COMMON ORDER:

This common order shall dispose of two writ petitions and contempt case. The facts in brief with reference to W.P.No.13253 of 2004 may be noticed. Third respondent, namely, Superintending Engineer, Roads and Buildings Circle, Nalgonda (hereafter called, SE) invited tenders for the work of improvements to Janagaon – Suryapet Road from Km.44/0 55/0 at an estimated contract value of Rs.2,84,66,623/- (Rupees two crores eighty four lakhs sixty six thousand six hundred and twenty three only). The form of contract is in accordance with *inter alia* the procedure laid down by the Government of Andhra Pradesh in G.O.Ms.No.94, I&CAD (PW) Department, dt.1.7.2003. As per the tender procedure, the bidders have to register their tenders on the electronic procurement market place of the Government (e-procurement) by submitting the tenders before 14.6.2004. The technical bids are to be opened up on 14.6.2004 and the price bids are to be opened on 17.6.2004 by the tender accepting authority, namely, SE.

The petitioner in W.P.No.13253 of 2004 is 'A' class contractor. He submitted his tender along with three others, including petitioner in W.P.No.13851 of 2004. The petitioner's technical bid was opened, but price bid was not opened on the ground that he did not comply with one of the essential conditions prescribed in the tender schedule. It was pointed out that petitioner did not submit bank guarantee towards earnest money deposit in favour of Pay and Accounts Officer, Nalgonda and that he submitted bank guarantee favouring the SE. Apprehending that the Commissioner of Tenders, first respondent, (hereafter called, COT), and Chief Engineer, Roads and Buildings, second respondent, (hereafter called, CE) might open the price bids of others, petitioner filed W.P.No.13253 of 2004 seeking a declaration that the action of the respondents in declaring the petitioner as disqualified, is illegal and for a consequential direction to the respondents to consider the tender of the petitioner. This Court admitted the Writ Petition on 30.7.2004 and passed interim order on the same day directing the respondents to consider the tender of the petitioner and open the price bid without insisting upon the bank guarantee in favour of Pay and Accounts Officer.

The petitioner in W.P.No.13851 of 2004 is also a Class-I contractor who submitted tender pursuant to the notice inviting tenders (NIT) dt.25.5.2004, but the price bid was not opened. The SE addressed a letter to the CE bearing No.TS/T2/RDC/J-S/2004, dt.17.6.2004 pointing out that the petitioner in W.P.No.13851 of 2004 did not submit certificate/declaration of the quality control lab and that he has used stamp paper bearing No.01AA643733 on online, and later submitted stamp paper hard copy bearing No.OOAA243782. At that stage, petitioner immediately submitted certificate of quality control lab, and also addressed a letter pointing out that the mentioning of number of stamp paper on online was mistake and hard copy of stamp paper was correct, in vain. Therefore, he filed the Writ Petition seeking a declaration that the action of the respondents in not opening the price bid of the petitioner is illegal and arbitrary and for a consequential direction to the respondents to consider the tender of the petitioner. In the said Writ Petition this Court impleaded the

petitioner in W.P.No.13253 of 2004 as party respondent No.4. In this Writ Petition also this Court on 5.8.2004 passed interim orders directing CE and SE to follow the normal procedure of opening of financial bids at a time.

The petitioner in W.P.No.13851 of 2004 also filed a contempt case being C.C.No.107 of 2005 alleging that in spite of directions of this Court on 5.8.2004, the SE did not open financial bid of the petitioner and thereby committed contempt of court.

As the controversy raised in these three matters is in relation to NIT dt.25.5.2004, the matters were heard together and are being disposed of as such.

There is no dispute nor the tender conditions brook such a doubt that all the bidders have to strictly comply with eligibility criteria prescribed in tender schedules. The eligibility criteria is laid down in relation to past experience of tenderer, key equipment and key personnel possessed by the bidder and the conditions of solvency. As noticed supra, even as per NIT the form of contract and eligibility criteria are in accordance with various Government Orders, including a latest order being G.O.Ms.No.94, I&CAD (PW) Department, dt.1.7.2003. Be it noted by the said order, the Government issued a comprehensive procedure for inviting tenders and registration of contractors in pursuance of report submitted by Cabinet Sub-Committee to go into the question of streamlining of tender procedures. Paragraph-8 of Annexure-I of G.O.Ms.No.94, dt.1.7.2003 reads as under.

(8) FINALISATION OF TENDERS:

i. Tenders will be finalized by the EEs/Ses for the works costing upto their powers to accord technical sanctions.

ii. The Chief Engineer shall fialise the tenders upto Rs.2 crore. The tenders for the works costing more than Rs.2 crore will be referred to COT along with Technical Bid evaluation and Price Bid evaluation for consideration. The COT shall scrutinize the tenders submitted by Engineers-in-Chief / Chief Engineers / Project Administrators in accordance with the conditions stipulated in the Tender document and in case of any discrepancy or non-adherence to the conditions, the same shall be communicated which will be binding both on the Tender Concluding Authority and the Contractor. In case of any ambiguity, the decision taken by the COT on tender shall be final.

iii. Negotiations are not permitted to be conducted at any level.

iv. The time allowed from the date of publication of tender notices to the date of receipt of tenders is 14 days for the first call and 7 days for the second call. The tenders will be received following three box system i.e., at SE's office, Office of the SP of the District where the SE's office is located and one in the office of the ENC or by post to the SE concerned.

As per the above procedure where estimated contract value of the work is more than Rs.2,00,00,000/- (Rupees two crores only) the tender accepting authority - in this case SE – has to submit tenders to COT along with technical bid evaluation and price bid evaluation for consideration. After receiving such evaluation, COT shall scrutinize the tenders submitted by lower authority in accordance with the conditions stipulated in the tender document and take decision, which shall be final. It is also submitted that in case of any discrepancy or non-adherence to the conditions, the same shall be communicated by the COT, which shall be binding both on the tender concluding authority as well as the contractor. In this case, as noticed supra, SE, after conducting preliminary scrutiny of the four tenders, two filed by the petitioners herein as well as two other tenders filed by two others, submitted a report by way of letter dt.17.6.2004. Presumably this was intended to be communicated further above to COT by the CE. Even before that stage was reached, petitioners filed these Writ Petitions. The attention of this Court is invited to paragraph 3.3 of the tender schedule, which deals with qualification criteria for opening of the price bid, and reads as under.

3.3. QUALIFICATION CRITERIA FOR OPENING OF THE PRICE BID.

A. To qualify for opening the Price Bid each firm in its name, should have, during the last five financial years from 1999-2000 to 2003-04 (specify the financial years; those immediately preceding the financial year in which the tenders are invited).

a) Satisfactorily completed as a PRIME CONTRACTOR, similar works of value not less than Rs.113.87 lakhs (at current price level) in any one year.

Note: - The cost of completed works of previous years shall be given weightage of 10% per year to bring them to current price level. (the financial year in which bids are invited).

b) executed in any one year the following minimum physical

quantities.

i. Earth work in both excavation & embankment (combined

quantities) 21378 Cum.

ii. Gravel base, Grannular base, Gravel shoulders: 5796

Cum

iii. SDBC/AC/BC/MSS/BM/DBM: 2435 Cum

iv. WBM/WMM/CRM/CRB:3339 Cum

B) Each bidder should further demonstrate:

a. Availability (either owned or leased or to be procured

against mobilization advance of the following key and critical equipment for this work.)

S.No.	Equipment Type and Characteristics	Minimum No. required
i) ii) iii) iv) v)	80/100 KN static weight rollersVibrator rollers 80/100 KN Hot mix plant 40 – 60 TPH Paver finisher Mechanical 60/80 KN Tandom roller	1 No. 1 No. 1 No. 1 No. 1 No.

Note: The manor equipment to attain the completion of works in accordance with the prescribed construction schedule is to be shown in the above table.

b. Availability of Key personnel

i. Graduate Engineer 1 No.

ii. Diploma Holders with adequate experience 1 No.

c. Liquid assets and/or credit facilities of not less than Rs.56.94 Lakhs (Credit facility/ letter of credits/ Solvency Certificates from Nationalised Banks or any scheduled commercial bank etc.)

Bid capacity. OMITTED

Reading paragraph 3.3 of the tender schedule and paragraph 8 of Annexure-I of G.O.Ms.No.94, dt.1.7.2003, it is clear that tender accepting authority has to open technical bid and after satisfying whether bidders satisfied eligibility criteria, has to open the price bids. After doing so, the tender accepting authority has to submit technical bid evaluation as well as price bid evaluation to COT as the value exceeds Rs.2,00,00,000/-. However, as per the tender conditions the price bids of only such tenderers who comply with the eligibility criteria are to be opened. It will not be permissible for the SE to open the price bid of those contractors, who according to him do not satisfy the eligibility criteria. That is to say, the tender accepting authority has to open price bid of only those contractors who satisfy eligibility criteria and prepare evaluation report in respect of technical bid as well as price bid of those contractors who satisfy eligibility criteria. In the case of those contractors who according to him do not satisfy eligibility criteria as per the technical bid, the SE cannot straight away reject the tenders as he is not decision making authority. In such cases, the SE has to forward the technical bid and the evaluation of the price bid in sealed cover to the COT, who alone would again reevaluate entire tenders in

accordance with eligibility conditions stipulated in the tender schedule with reference to a particular NIT.

As already mentioned, the SE has already addressed a letter to CE pointing out that all the four tenderers did not satisfy the eligibility criteria. However, it is brought to the notice of this Court pursuant to the interim orders passed by this Court in W.P.M.P.No.16944 of 2004 in W.P.No.13253 of 2004, dt.30.7.2004 the price bid of the petitioner in W.P.No.13253 of 2004 was already opened on 5.2.2005. That being the matter, it is now for the SE to forward technical bid as well as price bid of the petitioner in W.P.No.13253 of 2004 as well as technical bid and price bid submitted by the petitioner in W.P.No.13851 of 2004 to the COT, Government of Andhra Pradesh. Unless and until the technical bids as well as price bids are evaluated by the COT afresh in accordance with paragraph - 8 of Annexure –I of G.O.Ms.No.94, dt.1.7.2003, it cannot be said that the authorities have taken a final decision. In that view of the matter, though the counsel for petitioners made elaborate submissions justifying the qualifications of their clients, this Court refrains from recording any findings on these aspects. It shall be open to the petitioners to raise objections with regard to other tenderers at the time of evaluation of tenders by COT.

In the result, these Writ Petitions are disposed of directing the SE and the CE to forward all the technical bids and the price bids (in sealed covers, if they are not already opened) to the COT immediately whereupon the COT shall first evaluate technical bids and then take appropriate decision in accordance with the conditions of tender schedule.

Insofar as the Contempt Case is concerned, this Court passed orders directing the authorities to open the financial bids by adopting normal procedure of opening tenders. In view of the orders passed by this Court, as above, the contempt, as alleged, would not arise and therefore the Contempt Case is dismissed.

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(V.V.S.RAO, J)

7.6.2005

bnr

To

1. Sri Ravinder Reddy, the Commissioner of Tenders,

Andhra Pradesh, VI Floor, B.R.K.R. Bhavan, Hyderabad.

2. Sri Koteswara Rao, the Chief Engineer, Roads and Buildings,

Erramanzil Colony, Somajiguda, Hyderabad.

3. Sri Rama Krishna Kumar, the Superintending Engineer,

Roads and Buildings Circle, Nalgonda.

4. 2 CCs to G.P. for Transport Roads and Buildings (OUT).

5. 2 CD copies.